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# **PLATFORM FOR TAX GOOD GOVERNANCE**

## **Clarification on Conflict of Interest Rules**

**Meeting of 7 December 2016**

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## **Introduction**

During the September Platform meeting the draft rules of procedure of the Platform were discussed. As the rules of procedure adopted by the Platform in 2013<sup>1</sup> have served it well, DG TAXUD considered it appropriate to carry them over to apply to the new Platform (mandate 2016-2019).

A member made a couple of comments which were based on the recommendations as made by the European Ombudsman in her own-initiative inquiry concerning the composition of Commission expert groups. During the discussion the question was raised what constitutes a conflict of interest as mentioned in the draft rules of procedure of the Platform<sup>2</sup>. This document addresses this question by outlining the rationale behind the rules on conflict of interests and explaining the application of these rules within the Platform for Tax Good Governance.

The draft rules of procedure<sup>3</sup> include provisions on conflict of interest. However for the purpose of clarifying this notion as well as its scope of application, it is relevant to refer to both the recommendations made by the European Ombudsman and the Commission Decision C(2016) 3301 on establishing horizontal rules on the creation and operation of Commission expert groups.

### **The European Ombudsman's own-initiative inquiry**

On 27 January 2015, the European Ombudsman wrote to the Commission in order to communicate (i) the feedback she received to the public consultation carried out in the context of her own-initiative inquiry into the composition of Commission expert groups, (ii) her preliminary views on the issues involved, and (iii) a set of suggestions to which the Ombudsman invited the Commission to respond.

In many of the contributions made to the European Ombudsman's consultation, stakeholders expressed concerns over the appointment of individuals, who are affiliated with a specific stakeholder group, as experts in their personal capacity. The Ombudsman suggested that assurance must be given to guarantee that individual experts appointed in their personal capacity do not find themselves in a conflict of interest situation. In the European Ombudsman's view, the Commission's horizontal rules for expert groups, applicable at that time, did not provide for sufficient safeguards to this effect. As a result, it appeared necessary for the Commission to revise its conflict of interest policy in this area. The European Ombudsman provided the Commission with the following suggestions<sup>4</sup>:

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<sup>1</sup> Such rules were based on the standard rules of procedure as proposed in the Commission Decision C(2010) 7649

<sup>2</sup> Article 11, draft rules of procedure of the Platform

<sup>3</sup> With regard to the prolonged Platform mandate as set out in C(2015) 4095

<sup>4</sup> The European Ombudsman's own-initiative inquiry OI/6/2014/NF concerning the composition of Commission expert groups, Emily O'Reilly, 27/01/2015.

1. The Commission should carefully assess individuals' backgrounds in the course of analyzing applications for appointment to expert groups in a personal capacity. The analysis should be carried out with a view to detecting any actual, potential or apparent conflicts of interest.
2. The Commission should provide, in its decision laying down the general framework for expert groups that no individual with any actual, potential or apparent conflict of interest will be appointed to an expert group in his/her personal capacity.
3. A sufficiently detailed CV of each expert appointed in his/her personal capacity should be published on the expert groups register.
4. Each expert appointed in his/her personal capacity should declare in writing any circumstances that could give rise to a conflict of interest as regards his/her activity in the expert group. The declaration of interests should be updated on a yearly basis.

The suggestions made by the European Ombudsman were duly reflected in the revised horizontal rules on expert groups adapted by the Commission on 30 May 2016. However, it must be noted that the fourth suggestion on conflict of interests is not fully reflected in the revised horizontal rules because the Commission considers that it is disproportionate for DGs to deal with annual updates of the declarations of interest where no changes occurred in the expert's situation. However, the revised horizontal rules foresee that experts appointed in a personal capacity shall be required to promptly inform the competent Commission department of any relevant change in the information previously provided<sup>5</sup>.

### **Horizontal rules on the creation and operation of Commission expert groups**

The standard rules of procedure as set out in the horizontal rules of 2010 already contained rules on conflict of interests. The revised horizontal rules have reinforced conflict of interest management<sup>6</sup> in relation to individuals appointed in a personal capacity, who are due to act independently and in the public interest. In particular, new provisions introduce a definition of 'conflict of interest' and provide for a specific conflict of interest assessment to be performed by all Commission departments concerned, on the basis of detailed standard declarations of interests to be completed by experts<sup>7</sup>.

A *conflict of interest*, as defined in the horizontal rules<sup>8</sup>, is any situation where an individual has an interest that may compromise or be reasonably perceived to compromise the individual's capacity to act independently and in the public interest when providing advice to the Commission in relation to the subject of the work performed by the expert group or sub-group in question<sup>9</sup>.

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<sup>5</sup> Commission's reply to the European Ombudsman's recommendation in her strategic inquiry OI/6/2014/NF concerning the composition of Commission expert groups

<sup>6</sup> Commission Decision C(2016) 3301, Article 11

<sup>7</sup> Communication to the Commission Decision C(2016) 3300

<sup>8</sup> Even though the draft rules of procedure of the Platform are based on the 2010 template, it is relevant to refer to the 2016 template for the purpose of clarifying the notion of conflict of interests.

<sup>9</sup> Commission Decision C(2016) 3301, Article 2 under (4)

However, the specific rules for a conflict of interest<sup>10</sup> make a distinction between 'Type A members' and 'Type B, C, D and E members'. In the horizontal rules it is stated that an expert group may be composed of the following type of members<sup>11</sup>:

- (a) individuals appointed in their personal capacity who are to act independently and in the public interest (*Type A members*)
- (b) individuals appointed to represent a common interest shared by stakeholders in a particular policy area, who do not represent an individual stakeholder, but a policy orientation common to different stakeholder organisations (*Type B members*)
- (c) organisations in the broad sense of the word, including companies, associations, Non-Governmental Organisations, trade unions, universities, research institutes, law firms and consultancies (*Type C members*)
- (d) Member States' authorities, at national, regional or local level (*Type D members*)
- (e) other public entities, such as third countries' authorities, including candidate countries' authorities, Union bodies, offices or agencies and international organisations (*Type E members*).

Whereas article 11 of the horizontal rules requires Type A members to submit a declaration of interests ('DOI') form on the basis of the standard DOI form<sup>12</sup>, together with an updated curriculum vitae, as part of their application to become members of an expert group or sub-group, a declaration of interests shall not be required in relation to<sup>13</sup>:

- (a) Type B members and representatives of Type C members, since they are not required to act independently, but represent an interest which is openly declared.
- (b) Representatives of Type D and E members, since they are not required to act independently, but express the views of the public authorities which they represent.
- (c) Observers, since they do not have voting rights and do not participate in the formulation of recommendations or advice.
- (d) Individuals participating as 'invited experts' in accordance with Article 15, since they are not permanent group members. Individuals invited as independent experts shall however be required to inform the competent Commission department before the meeting of any interest which may compromise their capacity to act independently and in the public interest when advising the Commission.

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<sup>10</sup> Commission Decision C(2016) 3301, Article 11

<sup>11</sup> Commission Decision C(2016) 3301, Article 7 sub 2

<sup>12</sup> Commission Decision C(2016) 3301, 30 May 2016, Annex 4

<sup>13</sup> Commission Decision C(2016) 3301, 30 May 2016, Article 11 sub 8

### **Platform for Tax Good Governance:**

The rules on conflict of interest as stated in the draft rules of procedure of the Platform are as follows:

1. Should a conflict of interest in relation to an expert arise, the Chair may exclude this expert from the group or a particular meeting thereof or they may decide that the expert in question shall abstain from discussing the items on the agenda concerned and from any vote on these items.
2. At the start of each meeting, any expert whose participation in the group's work would raise a conflict of interest shall inform the Chair.
3. Conflicts of interest shall be reported in writing, e.g. in the summary minutes of the group's meeting.
4. Paragraphs 1, 2 and 3 shall also apply to deliberations taken by the group in written procedure.

However, such rules need to be interpreted in the light of Commission Decision C(2016) 3301. Given the distinction made between Type A members and Type B, C, D and E members, it is important to emphasize that the Platform for Tax Good Governance consists only of Type C and Type D members plus observers. However, as explained in the previous section, a conflict of interest is relevant only to experts appointed in a personal capacity (Type A members). The Platform members, Type C and Type D members, are not appointed in their personal capacity; they speak on behalf of their organisation. Therefore for type C and D members a conflict of interest cannot arise between such Platform members and the Expert Group.

In conclusion, it can be stated that the rules on conflict of interest as stated in the draft rules of procedure of the Platform have no practical effects for members of the Platform for Tax Good Governance, including where such rules are interpreted in the light of Commission Decision C(2016) 3301, because there are no 'Type A members' participating in the Platform. As a result, DG TAXUD does not see the need for amending such rules.